

**TOURO LAW CENTER SYMPOSIUM**  
**Women and the Law**  
**Spring 2007**

**Dean Lawrence Raful\***: Ladies and Gentlemen, good afternoon. I just can't think of an honor that I would rather have than welcoming the Chief Judge to Touro Law School. Chief Judge.

We have been so honored over the last couple of weeks, besides the week off for Easter and Passover, because just before break we welcomed Justice Prudenti to this courtroom and now the Chief Judge of the State of New York. What an honor. In welcoming you to this new building, this wonderful new building, I want to draw your attention to this magnificent auditorium, state of the art classrooms, a fantastic new library, an outstanding and professional clinical area, a new public advocacy suite unknown in any law school in the country bringing public advocacy groups into the law school, a wonderful cafeteria, which hopefully you sampled, nice offices for faculty, and a very nice office for the Dean! The most important thing I would say to the Chief Judge is that this is really the law school of the future, not because of the building, but because of the location. Howard Glickstein had a dream a number of years ago and now the dream has come to fruition, and I am here to tell you that after just a few months here, Chief Judge, I can tell you that it works. Since the day we moved in, in January, we have had a number of judges and lawyers from the Cohalan Court Building and the Federal Court Building come to visit us here to talk to students, to be part of symposiums, to have small lunch groups, to speak in classes. We have sent third year students over to observe trials, but we have also sent first year students over from day one to see judges. Part of that is because of the dedicated work of people like the Honorable H. Patrick Leis. Justice Leis is here today and he has been a terrific friend of ours as the presiding judge of the state courthouse, the Cohalan building. But our students are learning, your Honor, from day one about what justice means in Suffolk County, and we see rich clients and poor clients, and black and white clients, and tall clients and short clients, and old and young, and we see justice sometimes and problems with the justice system sometimes but after each of those trials the judges in Cohalan, the judges who work for you, have been so gracious in spending time with our students, answering questions and talking about how to be a professional lawyer. It's a system which I know is unparalleled in any other law school in the United States and we are so proud to report to you that the dream that Howard Glickstein had

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\* Dean and Professor of Law, Touro College, Jacob D. Fuchsberg Law Center.

many years ago has come to fruition and it's working. We hope that you will not be a stranger here to view what is happening.

I do want to mention the bench behind me because it probably looks a little odd to you. It's a hybrid. I didn't exactly love it, but we had to do it as a hybrid. We have a bench with seven chairs for appellate advocacy, but we also have a document tray, and a witness box, and a jury box because we knew that we would have to use this room for both trial advocacy and appellate advocacy, and we wanted to be able to get the best of both worlds, and when Dean Glickstein and I were sitting with the architect and talking about the size of the appellate bench we used the number seven for the chairs (I don't know if that is a number you are familiar with). The hope is that someday you will bring your cohorts with you, your colleagues with you, and we would love to see you hold court in this building, in Suffolk County, with Suffolk County cases and Suffolk County lawyers, so that our students can learn what it means to be among the finest judges in New York. So, we would have to welcome you back, to sit in this chair if you would like to some day soon. It is a great pleasure to welcome you today on behalf of the students and the faculty and the staff of the Touro College, Jacob D. Fuchsberg Law Center, named for Jacob Fuchsberg, whom you are well aware of, and it is a great honor to have you. I thank you for coming today. Thank you.

It is now my pleasure to make the formal introduction of the Chief Judge, the Honorable Fern Fisher, Administrative Judge of the Civil Court of the City of New York. Judge Fisher.

**Honorable Fern Fisher\***: Good evening. It is always fantastic to be at Touro Law School. It's even better yet to be asked to introduce the Chief Judge of the State of New York. Judith S. Kaye was appointed New York's Chief Judge in 1993 by Governor Mario M. Cuomo and is the first woman to occupy that post. She was reappointed Chief Judge by Governor Elliot Spitzer just recently in 2007. She is now the longest serving Chief Judge and the only Chief Judge to complete a full term in the State of New York. She was also the first woman appointed to the state's highest court when she joined the bench in 1983. As New York's top judicial officer, Judge Kaye both presides over the seven membered Court of Appeals and heads the state's unified court system with more than 1,200 state paid judges in 363 courthouses statewide. Judge Kaye serves on numerous committees. She was the President of the Conference of Chief Justices, meaning she was the chief of the chiefs, and she is one of 15 women chief judges in this country. She has lectured widely. She has received several thousands and

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\* Administrative Judge, Civil Court of the City of New York.

hundreds of awards, and she is a 1958 graduate of Barnard College and a 1962 cum laude graduate of New York University School of Law, but that's the bio that I am reading. But my job here today is not just to read the bio, but to bring a personal viewpoint to who the Chief Judge of the State of New York is, and that's what my real job is here today. What Judge Kaye brings to the bench is her gender, and I think it makes a difference. It shows in the fact that she is a multi-tasker as most women are. She has boundless energy, which most women have to have, and she is extremely creative, and that has shown in the specialized courts that we have now in the State of New York. We have the integrated domestic violence courts and the drug treatment courts, she has been a tireless, tireless supporter of jury reform, and she has been personally involved in a project that I am running, a homeless prevention project, and it is because who Judge Kaye is that the State of New York has changed so dramatically during her tenure. She is gracious and she is caring. Her handwritten notes always come at the right moment, and they always say the right thing. She attends people's funerals. She was at my mother's funeral, and when I looked out at the crowd and saw the Chief Judge of the State of New York, it just took my breath away. And to this day, we share a special song together because of that funeral. She remembers your children's names, but what is really scary is that she remembers where they go to school. It is that special Judith S. Kaye touch that makes this a special, special court system, and what Judge Kaye does is to bring a combination of femininity and leadership. She shows us as women how to do it all. She is a mother of three, a proud grandmother, and she was a wife for 35 years. She is elegant and she is stylish. Judge Kaye will tell you that every woman needs a pair of red shoes. And in your honor today, I have on my red shoes. But wearing red shoes is not what I take away from my friendship and knowing Judge Kaye. What I take away from knowing Judge Kaye is what being a true leader is. It's leadership with energy, creativity and humanity, and it is my pleasure, to introduce to you today, to my chief judge, my role model, and your chief judge, the Chief Judge of the State of New York, Judith S. Kaye.

**Chief Judge Judith S. Kaye\***: Thank you so much Judge Fisher for that breathtakingly spectacular introduction. As I watched you projected on the large screen behind me, it genuinely confirmed what I have always known of you Fern, that you are larger than life, and definitely the wind beneath my wings. Thank you so much. Dean Raful, Dean Glickstein, friends, what an honor it is for me to be here with you and what a pleasure it is to be among all of my friends today. When the Dean invited me to speak, he mentioned that this would still be considered in the range of a housewarming and I would have the pleasure of

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\* Chief Judge, New York State Court of Appeals.

touring your beautiful new facility -- and it is indeed, Howard, a great credit to you, to the Dean and to everyone who had a part in it.

This is a great, great, facility and it's in a wonderful neighborhood. I understand you've been good neighbors, taking advantage of every opportunity for synergies with our marvelous state courts and every now and then, when you have to, with the federal courts as well. So, I congratulate all of you, the Dean, the faculty, administration and students, and I wish you all a long and happy and very productive life in your new digs. And I congratulate you as well on your choice of the symposium, which you knew would inevitably draw me to campus today despite the upcoming two weeks in Albany. They will be ferocious weeks, I think, that lie ahead, but the subject for me, women in the law, is so compelling and attractive that I could not resist coming. I'm so happy that I'm here.

Whenever I'm asked to speak on the subject of women and the law, one of the first experiences that comes to my mind is a telephone call that I received about 15 years ago from a young reporter in the city of Albany. I have to believe he was a very young reporter because this is what he said to me. He said he especially wanted to talk to me about women in the legal profession because, as he saw it, my career "spanned the entire epic of the issue." That is a quote. At that point, it had been roughly three decades since my admission to the Bar, 44 years ago, but until that telephone call, I really never before felt like Methuselah and I have to tell you, at that moment, I did.

But I see his point. I think he had a good point, and I even actually agree with it because in one sense, the history of women lawyers is ancient. It goes all the way back, maybe not to Methuselah, but quite far back. Yet in another sense, the history of women lawyers is all relatively recent, isn't it? Very much, certainly, of the last few decades, and in fact, I think, to my mind the history of women lawyers, women in the law, is still very much being made today. It's certainly not my intention to take you all the way back into antiquity. I think that could be fascinating, but I thought I would use a favorite format of mine, and I would talk about five life lessons from my so-called epic spanning career. You know ante-diluvians like to talk about their life lessons; so I'm going to give you a few of my life lessons.

I'm going to start with lesson number one which goes all the way back and tells you more than any one of you ever wanted to know about me. It actually begins in Monticello, New York, a village at the foot of the Catskills, where I was born. My parents were both immigrants from Eastern Europe. They were farmers, and later shopkeepers. We lived on the outskirts of Monticello where,

believe it or not, for my kindergarten year, I attended a one-room schoolhouse. Has anyone here seen a one-room schoolhouse? Abe Lincoln and I were great buddies. But actually it's relevant. It turned out to be a life-altering experience for me, the most important year in my entire life, because it ultimately allowed me to skip two grades, two full grades when we moved into town and I was tested for public school. There's a lot of virtue in one-room schoolhouses.

So, I finished high school at the age of 15, left Monticello to attend Barnard College in New York City, and I just never left New York City. Can you imagine the enormity of the adjustment from Monticello to the sophistication of Manhattan? But I was determined that I was going to have a career, be very successful, in the field of journalism. After all, the editor-in-chief of the Monticello high school newspaper could not possibly fail in the high-powered world of journalism. At Barnard I was one of two Latin American studies majors. I became modestly fluent not only in Spanish but also in Portuguese. Neither language was spoken to any noticeable degree in Monticello, New York. But could the editor-in-chief of the Barnard Bulletin possibly miss in the world of high powered journalism?

Well, I could, and of course, I did. I searched long and hard, had innumerable rejections and ultimately secured a job as a social reporter for the Hudson Dispatch of Union City, New Jersey, right in the shadow of the burlesque theater, which was the only good thing about that job. That's where people thought I was going every day. I instead was reporting weddings and church socials and women's club meetings six days a week, 2:00 to 11:00 P.M., so it didn't take long before I realized that I had to rethink my entire life.

In total desperation, I enrolled at New York University School of Law, at night, with a day job editing copy for a feature syndicate. My sole ambition was to get off the social page of the Hudson Dispatch of Union City, New Jersey. It never, never crossed my mind that I would actually one day practice law. But I quickly learned that I loved the law. It had the same qualities that drew me to journalism -- an involvement in current affairs, an endless variety of intellectual challenges, the chance to make and shape public opinion, but even better, much, much better, law offered an opportunity to help human beings, and that's how I learned my first life lesson. Life lesson number one. As I discovered then and as I have rediscovered many, many times since, every now and then it's good and it's important to return to square one and to seriously reconsider the life course that you're on. Whatever it is you're involved in, you just shouldn't ever be doing things that are meaningless to you. Tomorrow is not promised and today is brimming over with opportunity so why waste it? That was a good lesson.

And now I go on to lesson two: In law, like journalism, I found that the ranks were pretty solidly closed to women. Back in 1962, it was near impossible to find a job. What I heard time and time and time again, was the line, “our quota of women is filled,” meaning that they had one, one woman, one quota or both. The more I was rebuffed, the more it strengthened my desire to join one of those totally impenetrable white shoe, Wall Street law firms, and miracle of miracles, ultimately I was hired by one, Sullivan & Cromwell, back in the year 1962, the only female in the litigation department. Departmental meetings began, “Gentlemen and Judy.” I loved that. I have to tell you to this day, why Sullivan & Cromwell ever hired me is one of the great mysteries and great joys of my life. But in 1962, when I joined the firm of Sullivan & Cromwell, all of the women lawyers, all of them, in all of the Wall Street law firms, could barely fill a table at a restaurant, and sometimes we did. Court appearances, believe me, were of storybook quality. Even some out here in Suffolk County, I could tell you about. Of course, we didn’t have the privilege of membership in downtown clubs and when we were invited there as guests, we had to use special entrances.

After two years at Sullivan and Cromwell, I worked as in-house counsel at IBM, then part time at New York University through three pregnancies. Yes by the way, I did marry. First, I worked part time at NYU Law School and then at a midsize commercial law firm, where I became a partner and remained as a litigator for fifteen very, very good years, and then naturally (as with many litigators), I began to yearn for a career in the judiciary. By the early 1980’s, the climate in New York had made it both desirable and important for there to be a woman on the Court of Appeals, the state’s highest court. There never had been one. So, I applied when a seat on the Court became available. And then came another miracle. In fact, two miracles, my appointment to the Court by Governor Mario Cuomo in 1983, and then in 1993, ten years later, my appointment as Chief Judge by Governor Cuomo. And that brings me to my second life lesson. A miracle can happen to you only if you have ambition. Yes, its okay, it’s even good, it’s very, very good to dream large and to have ambition. What’s more, for a miracle to strike you have to put yourself in the right place and you have to persevere. When you are in pursuit of a miracle, there’s no time to be timid and there is no time to be wishy-washy.

And that brings me to life lesson number three. Despite those 21 pretty terrific years practicing as a commercial litigator, my own interests changed very markedly. I now have 24 years as a judge of the state’s highest court and 14-plus as Chief Judge, a position that is both judicial and administrative. I was surprised to learn, as you have heard from Judge Fisher, that I am the first New York Chief

Judge actually to have completed a full 14-year term. Believe me, I am happy I did not know that back in 1993, that no judge before me had ever completed a term. And as you have heard, I was reappointed by Governor Elliot Spitzer just weeks ago. While I still love a complex commercial matter, or any of the mind-bending cases that come to the Court of Appeals, my executive role as Chief Judge has brought challenges that frankly I never thought I would enjoy as much as I do. Among the most persistent challenges has been the need for the courts and the law to remain relevant in this rapidly changing society. Consider, for example, that today probably three-quarters or more of our criminal cases are drug driven, many of them low level offenders, committing non-violent crimes, again and again and again, simply to support their drug habit. Or consider the huge child abuse and neglect dockets, the children being removed from their homes to foster care limbo. Or consider the modern day scourge of domestic violence. It still astounds me that we have thousands, tens of thousands of domestic violence cases every year in the New York State courts. Shortly after I became Chief Judge, I received an unforgettable lesson in domestic violence, two murder suicides, in each case with the female victim clutching a court-issued order of protection in her pocket. There was a public outcry... do something.

Well I am proud to say we have done something. We have done a lot. We began with a few domestic violence courts and later integrated domestic violence courts throughout the state, focused on victim safety and offender accountability. We have mental health courts to reroute people in need of treatment from prison. We have community courts; we have drug courts offering rehabilitation instead of jail, among them family drug courts to speed rehabilitation and avoid the need to terminate parental rights and juvenile drug courts for vulnerable teenagers. Of course, many of these problem-solving courts, including our very special and wonderful guardianship part (and I am looking out at Judge Leis) right here in Suffolk County. So life lesson number three centers on the wonderful people who have nurtured these extraordinary courts, the commissions and committees who envisioned them, as well as the dedicated judges who every single day make that vision a reality helping people to turn their lives around and helping courts to gain the trust and confidence of the public that we so desperately need and fully deserve.

Nothing makes me happier than hearing from one of our great judges (and I am so pleased to see several of them here today): “This is what I became a judge to do.” So whatever the subject, life lesson number three echoes Margaret Mead’s advice: “Never doubt that a small group of thoughtful committed people can change the world. It is the only thing that ever has.” And what a joy it is in

the New York State court system for me to be surrounded by the very best, the most thoughtful and the most committed people.

And that brings me to life lesson number four. As I reflect on such reforms that actually use court interventions to turn people from a descending life spiral, I think of a question I was asked shortly after my nomination to the Court of Appeals as the first woman to serve on that court, and I hear this question many, many times: “Are woman judges different?” And my answer to that particular question, which ended up as the quotation of the day in the New York Times the day I was nominated for the court back in 1983, was this: “I take my gender with me wherever I go.” I do. I really do. Fortunately, nobody that day asked me to explain what I meant by that. I think you get the picture, don’t you, of my bringing my gender with me, carrying my gender with me. I do.

On that subject, I note two relevant developments I have witnessed these past 14 years as Chief Judge. One is the number of women serving as the nation’s Chief Judges and Chief Justices. Today (and the number fluctuates) women head up 19 of the 56 state court systems represented in the conference of Chief Justices. That is about one-third. At one point, we had as many as 24 female Chiefs and no doubt will have that amount again, and will exceed that amount -- and happily too. We have seen the number of woman judges in New York State courts rise to nearly 30%. Pretty phenomenal. Not enough. The second development is the nationwide growth of court initiatives, like our problem-solving courts and enhanced focus on the fate of children in our society.

So I ask, is there a connection between the fact that problem-solving and child-centered initiatives have taken hold and gained strength while increasingly women have arrived in greater numbers on the judiciary? Is this chromosomal or is this coincidental? You be the judge. But put another way, can there be any question, any question, that the growing presence of women in the legal profession has had a very profound effect in the last quarter of the twentieth century? The recently admitted women lawyers I meet these days aren’t so worried about outright sex discrimination and pay disparity and sexual harassment, dominant issues for women lawyers in the workplace during the 60’s, 70’s, 80’s and even beyond. Today, their concerns are about finding mentors to help them shatter glass ceilings or at least give them a better chance to secure well-deserved leadership positions. Today, they search for effective ways of balancing life and work, at the same time, and now that the law student population nationally is close to 50% female, businesses and law firms that want to attract and retain the very best available talent simply cannot afford to ignore the



perspective of the twenty first century woman lawyer. These are front burner issues today.

So my fourth life lesson is this. None of us can help bringing something of our own background and our experience as well as our gender to everything we do. It is inevitable and, what's more, it is a very, very good thing. For the first time in all of my career as a lawyer, I have hope that the profession, women and non-women together, will confront, and they will at very long last resolve the life balance issues that regrettably are virtually unchanged since my own admission to the Bar. Together we can do this, we can do this, I know that we can.

And that brings me to my final life lesson, lesson number five. By the way, a good journalist would never have saved for last the most vexing issue that dominates my life today. It would have been the first. I assure you, it is number one on my agenda and my list of concerns these days and I bet you can guess what it is. Certainly, the judges can guess what it is. Whatever the topic that's being discussed, whether it's women in the law, or the rule against perpetuities, or anything else, for me the subject of judicial compensation is not simply relevant, it's absolutely required.

For the past two years, I have been strenuously advocating for the well-deserved salary increase for our judges, whose compensation has been absolutely fixed and frozen, not even a cost of living adjustment since 1999. We consistently receive great public support for the increases, even open, unequivocal support from leaders of state government. Indeed, for the first time in New York State history, judicial pay raises, as well as full retroactivity to 2005, were included in Governor Spitzer's budget. But when the dust settled, when the dust settled weeks ago, as I'm sure you've all heard, our judges were once again left out in the cold, rebuffed, trapped and caught in the jaws of Albany politics.

It is not my intention today, at this symposium, to rehash the reasons why, once again, we have failed to achieve what is unquestionably just and highly deserved or to review what plans we have for the weeks and the months ahead. Part of my purpose in raising this is that the subject for me is simply irrepressible. Partly, too, I don't want to miss an opportunity to put our plight before lawyers and judges, and even more important before law students, who fully understand that judicial independence is a treasured principle.

Our founders could not possibly have imagined the thicket into which the New York State judiciary has been thrust when they explicitly safeguarded the value of judicial independence as a foundation of our great democracy. And here

is where life lesson number five becomes important, because we are not giving up on this cause. In the words of the late South African lawyer, soldier, statesman, General Jan Christian Smuts, “When engaged in a good cause, never surrender for you can never tell what morning reinforcements will come marching over the hilltop.” Isn’t that a great quote? What are the morning reinforcements, you ask? Well, that’s part of the purpose in my talking up this issue wherever I go. The morning reinforcements, hopefully, are everywhere, and I don’t want to miss engaging a single one of them. We need them all for our cause is surely a good one. Now is your time, all of you, to come marching over the hilltop.

And those in short, are my five life lessons. If I had to distill a single theme from my remarks, it would be this, especially for women but actually for everyone. It is important to dream large, to be bold and vigorous and persistent in pursuing the goals that are important and meaningful to you, never to flag, never to give up hope, always to seek out and find the morning reinforcements, the allies in your cause, and always to use your talents, to make this a better, and a fairer, and a more just society. Thank you so much.

**Stephanie Adduci\***: Chief Judge Kaye, in honor of your extraordinary and inspirational career, the Journal of Race, Gender, and Ethnicity and Touro Law Center would like to present you with this token of appreciation for all that you are and all that you do. You truly are an inspiration.

**Chief Judge Judith S. Kaye**: Thank you.

**Stephanie Adduci**: The mediator for our next panel is Professor Meredith Miller. Meredith Miller, most recently an honorable Abraham L. Friedman Fellow and lecturer at Temple University School of Law, joined the faculty of Touro Law Center this past fall of 2006. After receiving her law degree from Brooklyn Law School, Professor Miller served as a law clerk to the New York Court of Appeals. She also worked as a litigation associate at Proskauer Rose L.L.P. in New York City. May I introduce Professor Meredith Miller.

**Professor Meredith Miller\***: Thank you to the Journal of Race, Gender, and Ethnicity for putting on such a wonderful, wonderful program today and for the honor of moderating this panel. Getting up after Judge Kaye, who is such an inspiration, is in particular, in and of itself, such a wonderful, wonderful honor.

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Also, thank you to our panelists, who have graciously agreed to share their thoughts with us today. They've been asked to speak generally about women in the judiciary, and I can certainly fill the entire time slotted for this panel singing their praises. I assure you that all of the superlatives that one ordinarily uses in an introduction are certainly applicable to our panelists today, but I think you probably came to hear them speak and not me. So, what I will give you is an introduction to each of them that exercises a great degree of restraint on my part because they are all so, so impressive. First, we'll hear from the Honorable Fern Fisher, who we have already learned is the Administrative Judge of the Civil Court of the City of New York. In 1989, she was appointed judge of the housing part of the Civil Court and thereafter, was elected to the Civil Court where she served as Deputy Supervising Judge. In 1993, Justice Fisher was elected to the Supreme Court of the State of New York, and in 1996 she was appointed to her present position. We'll next hear from Professor Beryl Jones, who is a professor of law and associate dean for student affairs at Brooklyn Law School, which is particularly important to me because it's my alma mater. She joined the faculty at Brooklyn Law School in 1984, after serving as an Assistant U.S. Attorney in the Civil Division of the Eastern District of New York, and law clerk to Judge Higginbotham of the Third Circuit. She specializes in copyright law, art law, international intellectual property and professional responsibility. We'll hear next from the Honorable Margaret Chan, who was elected just last year to a judgeship in the Kings County Civil Court. We are especially honored to have her here today as she is a Touro graduate. At Touro she was the Managing Editor of the Law Review, a Teaching Assistant for the Leap Program, and before becoming a judge, she worked as a Court Attorney for the Appellate Division, Second Department, and was also in private practice. And finally, as they say, last but certainly not least, we will hear from the Honorable Mary Werner. She is District Administrative Judge of the Suffolk County Supreme Court. She was appointed to the Supreme Court by Governor Mario Cuomo in 1991 and that same year elected to a full term. She was appointed to the position of District Administrative Judge in 1995 where she was instrumental in initiating drug courts, which we have heard a little bit about today, and in 1999 she returned to the trial bench where she presided over other civil matters. So, without further ado, I will turn this over to our first panelist, the Honorable Fern Fisher. Thank you.

**Honorable Fern Fisher:** I think this evening you will hear a recurrent theme from all of the panelists because many of us have had similar experiences and some of the same life lessons that Judge Kaye referred to but maybe just a bit different. Just recently, at a reunion at Harvard Law School of African American graduates, my class was referred to as the "old guard." So, I may not be Methuselah but apparently I am old enough to be considered the "old guard." So,

as I approach my thirtieth year out of law school next year you take stock of how did I get here and why? And the route has not always been so smooth, nor so clear, and I think one of the messages that you'll hear from all of us is that you sort of have to go with the ebbs and tides and the flow and go through open doors when the doors open. Sometimes you may have to be pushed through, which is what happened to me in my career. For those of you who don't know me, I am a Long Island girl. I grew up in Riverhead at a time when the highest migrant farm population was not in Texas or California but, believe it or not, in Riverhead, New York. And I saw the most deplorable housing conditions that I have ever seen in my entire life out in Riverhead. And at that point I dedicated myself to public service, but I thought I would teach. So, I went off to Howard University, majored in history, minored in political science and secondary education, and was about to embark on a teaching career when, believe it or not, my history professors at Howard said "do you really want to do that," and somehow I ended up taking the LSAT and applied to law school with the encouragement of some of my mentors at Howard and my high school, applied to Harvard Law School and was I shocked when I actually got in. I kept thinking maybe they meant another Fern Fisher. But there I was, the Class of 1978, started in 1975, one of ten black women in a class of 550. I have to tell you that my first semester in law school and for those who are first year law students who might be here and if you are, you probably should be studying someplace, but if you are first year law students, you know it is a tough year. And for me my first semester at Harvard Law School was torturous. My best friend from law school Professor Deborah Post is here. She and I were in the same study group and Deborah will agree that it was a tough first semester. Professors confused us, we looked nothing alike but they confused us. They called on us way too many times, I think to try to catch us up sometimes. By the end of my first semester of law school, my skin was extremely dry. I went off to the infirmary to find out what was the problem and they said well use this cream and you should take showers. And I said showers? Well they said showers are better than baths because baths dry out your skin. And I had to confess to the doctor that I was taking 4 and 5 baths a day sometimes because whenever I got nervous I would get in a tub of hot water and say to myself "I can do this. I can do this." It wasn't until my first semester grades came out that I knew I actually could do law school. Milton Katz, a very eminent torts professor, went over our exams later on with us, which most of the Harvard Law professors did not do, and he showed me where I should have had an A instead of the B+ I got in torts and I'm like maybe I do belong here. I am also probably the only Harvard graduate that graduated without a job, much to the chagrin of the Harvard Law School placement office who kept calling me up to the day of graduation offering me any job, in any law firm, in any city in the country. Just tell them what I wanted and when I told them I wanted public interest and in particular

legal services, legal aid, there was dead silence on the other end of the phone. So, things have changed in terms of what's going on in law school. So, I came home to New York without a job. My mother who is a single parent was quite upset that she sent her only child to Harvard Law School and she came home without a job, and I counted underwear at Gertz's Department store that summer. And I think she thought I lost it for a bit. But, I think there are points in your career where you just have to sort of take stock sometimes regroup and figure out what to do, and so I started to interview for legal services jobs in New York City, and I was told that they wouldn't hire me because I hadn't taken the bar yet. I was taking the February bar and I might not pass, and I thought all Harvard Law students pass the bar. So, there was this implication that perhaps I would not pass the bar. But anyway, I was fortunate to become a legal services attorney, a housing attorney representing tenants in housing court and let's leap forward for a couple of years (because they are only giving me 10 minutes and they are going to start putting up that sign really soon) where I came to the point where I was the Deputy Director of Harlem Legal Services enjoying what I was doing immensely. I was representing tenants in housing court. I had a staff of staff attorneys who were energetic and passionate and we would work until 10:00 at night, and I would climb in and out of buildings in Harlem. I would stop evictions with orders to show cause and when we have time we can talk about some of the crazy things I did as a legal services attorney. But, at that point in the late 1980's, the court needed change and so I was convinced to apply for housing court not thinking that I would be selected and so, it happened and that is the start of my judicial career. Was I not surprised when I was actually appointed to the housing court? Seventeen years later on the bench, I have to tell you it is the longest job I have ever had, and it is the most fulfilling job I have had in my career. I have sat in housing court, in civil court and in Supreme Court where I did matrimonials, and then in 1996 Judge Kaye and Judge Lipman appointed me to be the Administrative Judge of the Civil Court of the City of New York, which for the record is the busiest court I believe in this country. We have almost one million filings, about 970,000 filings my court has every single year. And of those cases quite a few of the litigants are self-represented, they are pro se, meaning they don't have attorneys. So, I have a special responsibility as an administrative judge of a court where so many litigants are not represented by attorneys to be creative in terms of making sure that justice is fulfilled. And for the record, so many of those litigants, particularly in housing court, are women, single women, with children who are being evicted, and they are in deep crisis in their life. And it is our responsibility I believe as a court system, and you can tell that I have a chief judge that supports me 100%, so if we are part of the problem we should be part of the solution and so we have developed numerous programs to assist, keep people from being evicted, to help senior citizens get counsel. We have a

homeless prevention project. And I think it is my background that got me to where I am, to where I sit in my office, and I say there is a problem, the eviction rates are going up, the shelter rates are going up, and what is my responsibility as a judge and as a judicial administrator to solve that problem? And I think it's sort of like what Judge Kaye says, she carries her gender wherever she goes. I made a speech at the Brooklyn Women's Bar Association just this week and I said I go to bed as a black woman; I wake up as a black woman. And, when we were kids we used to joke around and say, the only thing I have to do in life is stay black and die. So, I am a black female and my experiences growing up in Riverhead, my experiences being raised by a single parent, who is a victim of domestic violence, who struggled throughout life, suffered from depression, I know what those kinds of adversities can do to a female. I have a special responsibility, a special obligation to take what I know and apply it to what I do as a judge. What I did the rest of my life really isn't important. What I do now is important and what I do in the future is important. So, it's been my great fortune to be able to have the power, if you will, and it is a powerful position, with 120 civil court judges and 50 housing court judges. I have 1,200 non-judicial employees. I have the most diverse court attorney staff of any court and I'm sure that's because I made a point of recruiting and getting people to apply for the position. So this power, I hope, I've used in the right way. I think it's my obligation, as a judge, and it's a different kind of responsibility when you're an administrator than when you're a judge sitting on the bench. When I was on the bench, I clearly think I brought my experiences to, you know, how I viewed the facts when I was a trier of fact or, you know, how I maybe drafted my jury charges when I was doing jury trials. I haven't done a trial in a while. She's giving me the 5 minute signal. I think I've done well. I'm ready to wrap up. But, as an administrator, when you are responsible for policy and making sure that that policy is implemented in the right way, it is an immense responsibility. It takes a lot of hours and that is something you just have to put in. If you want to be successful and if you want to be a contributor to society, you have to put the hours in. I sleep very little. I'm in the bed at 2:00 and am up at 6:00. On Saturday and Sunday, I may get a few more hours. I do what I have to do to get the job done. Now, my kids aren't always happy, but I've made all of their recitals, and I make Halloween costumes and cupcakes and everything else that all the other parents do. It's just that I did it at 3:00 in the morning. Okay, but it got done. So, I am not complaining, it has been my privilege to be the Administrative Judge of the Civil Court, and it's been my privilege to be a judge.

**Professor Beryl Jones\***: I first want to thank you very much for inviting me to participate in this conference for two reasons. First, I have not been to the new building before, and this is really quite an exceptional place, and I am just a little jealous. But it's just magnificent, and you should be so pleased with the building. The second reason that I'm very pleased that you asked me to participate, is this is a topic that I have been thinking about for quite a while. As my introduction indicates, it's not my primary area of interest, but it is something that I have worked on and thought about for many years. And, the chance to listen to and share the panel with women of this stature is really quite an honor. So, I very much appreciate it, and I'm particularly pleased to sit on the panel with Judge Kaye. I idolize her capacity to act within her position, to lead the courts, and to bring about a transformation of what appeared to be quite an exceptional court when she joined and when she was appointed as chief judge and it's really ever so much stronger as a consequence of her leadership.

In 1993, I was appointed by then Chief Judge John Newman to be the reporter on a study that was looking at the issues of gender, race and ethnic fairness in the Court of Appeals of the Second Circuit. The task force that I was appointed to work with was part of what might be called a task force movement. It started about ten years earlier in New Jersey, where the courts sought to look and examine themselves to see how they operated in a variety of different ways with regard to the issue. I think the first one was gender and then slowly the task force movement grew so that it began to look as well at issues of race and ethnicity. By the time the studies came to a close, about five years after my study was finished, 44 states had a task force and in the federal system, seven of the circuits had looked at these issues. Some of them only looked at issues of gender; some only looked at issues of race and ethnicity. My appointment to this position came in what I think of as a period of really significant and revolutionary change with regard to the notion of women on the judiciary, especially with regard to the federal courts. I was appointed right after Clinton was President, and he continued this revolution, which started in 1977 with Jimmy Carter. When Jimmy Carter was appointed President, there were only eight women, eight women, on the entire federal bench. The first woman had been appointed after some 150 years of our country's history. In 1928, Genovese Rose Clinton was appointed to the U.S. Customs Court. In 1934, Florence Allen was appointed to the Sixth Circuit. She was the first woman to be part of an Article III Court in the United States, and then the first district court judge was appointed in 1949; her name is Burnita Shelton Matthews. These women are the founding sisters and mothers of

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our movement to increase the number of women on the bench. The appointment of these women, however, really stood as a solitary series of acts until 1966 when the next female district court judge was appointed. So, that's almost a 20-year gap between appointments. That was Sara Hughes in the western district of Tennessee. As you will recall, Florence Allen, I'm sorry, was appointed to the Sixth Circuit in 1934, and it took another 34 years for a woman to be appointed to another U.S. Court of Appeals. That was Shirley Hufstедler, who was appointed in 1968 to the Ninth Circuit. Women of color were first appointed to the federal courts in 1966 with the appointment of Constance Baker Motley in the Southern District of New York. It took another 13 years for another woman of color to be appointed. Her name was Gabrielle McDonald, and she was appointed in 1969. From the appointment of Shirley Hufstедler in 1968, we waited another 11 years for the appointment of Amalya Kearse in 1979 to the U.S. Court of Appeals. I will say that the state courts were significantly better. The first female appointed to the state court was appointed as a justice of the peace in Wyoming. Her name was Esther McQuigg-Morris. The next appointment we find takes place in 1922, it's not all that good either; that's Florence Ellinwood Allen, who was the first state supreme court judge appointed in Ohio. The first chief of a state court interestingly enough was a judge in Arizona. That took place in 1965 with Warner Lockwood.

As you can see, the federal courts and courts in general have not been particularly welcoming to women and Carter's election as President really began a transformation of women in the federal judiciary. When he left there were 40 women on the courts, there were 11 in the U.S. courts of appeals, and there were 29 in the district courts. In 1995, which was sort of midway through my study, there were 144 women on the federal courts, and now we find in the year 2005, and my data is a little bit late, 221. So, there was a kind of significant sea change going as I began my study. We looked at, among other things on the task force, the number of women who were working as judges in the Second Circuit, and I will say that I was really somewhat surprised and in many ways disappointed. In 1991, there were 8 women in the district court. When the study concluded in 1996, it had grown to 19. That was a growth from 9% to 19% of the judges, and in the Court of Appeals, we had 6% of the judges up to somewhere around 15%. Most of the growth in the women in the court, and this is true as well if you look across the country in state courts, takes place in urban areas. When we started the study in 1990, there were no women in the Western District of New York and no women in Vermont. That's still true. Today, there are a total of three out of the nine folks are on the Second Circuit U.S. Court of Appeals who are women, and 19 of the 58 judges in the federal district courts in the Second Circuit are women. So, I find this trend to be one which is promising but not yet encouraging. It seems to



me that the kind of major burst that we saw growing with the election of Jimmy Carter begins to kind of level out, and I'm worried about the numbers as we go forward in the future.

The state courts, I must say, have done significantly better in terms of appointing women. It is very difficult to get estimates that are comprehensive. The best I have been able to figure out from the data that I have looked at is that approximately 20% of the state court judges are women and interestingly enough women represent 28% of the judges in the courts of last resort. In addition to a numerical study, we looked at the reports by lawyers with regard to their perceptions of women in the judiciary, and their perceptions of how other lawyers who were working in the courts conducted themselves with regard to women judges as opposed to male judges. My sense is, when I have looked at studies by others looking at these issues more recently, is that nothing has changed. We still find a resistance to women in authority, we still find lawyers from time to time being disrespectful of female judges and we still find that female judges are confronting significant and substantial issues about how to handle family life issues.

I must say that I have been quite surprised by what the studies report on whether or not women judges rule differently than male judges. There have been a number of studies in both state and federal courts and the results are not as startling as one might have expected, both studies that have been done by professors in the political science field and those in sociology. An interesting report is that Republican women are more favorable to criminals than Republican men, that women in general are more likely to give longer and stiffer sentences to female criminals than men are, and that women are more responsive to the demands of unions. I don't know that one can find any particular pattern or meaning in that. Most importantly, I think it is significant that we think about whether or not it is important to have women on the judiciary, because women rule differently, because women make different decisions. I am often curious about the notion that my place in the legal academy, my place in the profession, should be justified merely because of the possibilities that I might think differently about something. Well I do indeed think, as the judge mentioned, that I as a black woman probably approach life differently than the average white male law professor. I am not sure that by itself is a reason for me to be in the legal academy, and I am not sure if the reason why women should be on the court is because we will look at cases differently or transform them differently. Rather, I see our right to participate as a member of the judiciary as flowing from the mere fact that we too are members of this society, and thus we too ought to be able to participate in the decision making that shapes our culture. One of the things that I

think is going to remain a particularly difficult problem and that really is a problem that hasn't received much study is the difficulty of family life affecting the ability of more women to enter the judiciary. I am sure the panel that talked earlier today, looked at the studies on women lawyers and the glass ceiling that women lawyers are experiencing in law firms and the limited number of women who are leading up to positions of partnership. These studies show that a substantial cause for this are the obligations that women have with regard to child rearing and that these obligations prevent women from engaging in a number of activities that are important vis-à-vis advancement in firms including networking participation in extracurricular activities, just simply being around and having face time to establish the social relationships that enable you to move up in law firms. It seems to me that, as well, these factors which various studies have shown are important in terms of who gets appointed to the bench, who gets elected to the bench, may very well serve as barriers to the introduction of large numbers of women onto the bench in the future. So, I am absolutely pleased by the extraordinary transformation of the judiciary just in my lifetime as a lawyer, but I am somewhat cautious about whether the numbers are going to grow with the speed and kind of magnitude that they have in the past. Thanks.

**Honorable Margaret Chan\***: I am deeply honored to be here with such distinguished panelists as our Chief Judge Judith Kaye, my Administrative Judge Fern Fisher, Professor Meredith Miller and Associate Dean Beryl Jones, and I am very thankful to the *Journal of Race, Gender, and Ethnicity* for inviting me here, back to my alma mater, and to this beautiful campus and being here and seeing all of my former professors, none of who have aged one bit. It reminds me of my time here and one of the times that I do remember, especially having Chief Judge Kaye here, is when I was Managing Editor of the Law Review and we put on a dinner, and for the first time we had the whole Court of Appeals attend our dinner. That was May, 1993. That was a very proud moment for me.

I am also reminded of the time when I started at Touro in the orientation program that Professor Scherer headed in which Judge Fern Fisher and also Judge Anthony Brandveen came, and also Professor Post participated, and one of the things I remember was something you guys said about cases - remember most of the cases that we'll be studying are very old, *stare decisis* and all that, but just remember that they are written by old white men. Certainly in contracts class and in criminal law class these cases do pop up, and I do have to remember when the holdings didn't make sense to me, why the women didn't get what they rightfully deserved, you have to remember the era that it was written in and by whom it was

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\* Civil Court Judge, Kings County Civil Court.

written and for whom it was written. Coming back here brought all of this back to me.

In talking about gender and the judiciary, I don't have that much to tell you because I am new. I have been on the job for four months now, but I can tell you how I got there and I have to thank Judge Lazer because when I started at the Appellate Division, Judge Lazer said if you want to be a judge, stay here for about 5 years and then go into private practice so you get both sides – the experience of studying all types of law and the practical side of it. So, I thank you, Judge Lazer, for that. I did that. I took your advice to heart. I can also tell you that when I started at the Appellate Division, there was one day when four women judges were on the bench all together. It was a rare day. Usually it's three men, one woman, or two women, two men. It was a rare day that all four women justices were on the bench and that date was noted and celebrated because it was a rare occasion.

I am heartened to hear that women in the judiciary have risen 30%, and while that is good news, I do see that there are still doors to open and glass ceilings to shatter, and for me because I am Chinese, and to steal your phrase, Judge Kaye, I bring with me my gender and my race, and to steal your phrase, Judge Fisher, I go to sleep a Chinese woman and I wake up a Chinese woman. This was very true when I ran my campaign, which was just last year. Being a woman and being Chinese did play a big factor in my race, and I came across voters who had expressed (well one of my opponents was a housing court judge already so in his campaign literature, he had his robe on) to me but he looks like a judge and he is already a judge so you have this stereotype for some people and certainly I had to overcome that I did not look like a judge. While I had that, the good side was there were women who said that we needed more women on the bench. So, there are two parts of it, and I am thankful for women who wanted to vote for women but I am hoping that men will also start seeing that way and vote for women. I am also reminded of what Judge Sandra Day O'Connor said in one of her speeches, that to be successful, a woman has to be intelligent, open minded and friendly, and I hope I portrayed that in my campaign. I think I did, because I won. So, I may add that being a judge now and being new to the bench I know lawyers will test me to see how far they can push me or just to get a sense of where I stand, how I'll go on certain decisions, whether I will grant adjournments or not, or how many times I will do that, they want to get a sense of who I am, and I find that a sense of humor goes a long way. So, while I don't have a whole lot of experience on the bench, nor can I give you statistics on how men or women judges decide one way or the other, I can say that at the Appellate Division when we were doing recommendations for the appellate judges, I don't

think there really was a whole lot of difference personally. You follow the law and you try to go with that and I think if you have that as your guidance, you really can't go wrong. But again, there is this personal side as I said before, we do wake up with our personal experiences. We do wake up, well not we, but I do wake up a Chinese woman and I go to bed a Chinese woman. So I do carry that with me, and I think that adds an extra touch. I do advocate for more diversity on the bench. While we do have 120 civil court judges, I am one of two Chinese civil court judges in New York County. I think we have three Asian judges in all of the civil court. So definitely, we do need more diversity. I say that not because of anything else, but I do see it in people who come to court, even when I was an arbitrator, people who come to court when they happen to be Asian, they kind of lighten up, they feel like I can understand them. Whether I decide their way or not in their way, they feel that they have been understood and they have been heard by someone who understands their culture. The other day, I had a case with three Chinese litigants, different dialects. And, it was funny to see their reaction because first of all, they didn't expect to see a Chinese judge, and second of all, I knew what they were talking about in their dialects, and I couldn't say anything and needed to get an interpreter, but meanwhile, they did know I understood them because I would look up and show an acknowledgement of what they had said, and I think that it is just human nature that when something happens to you, you either look up and you understand what they are saying. So, that was quite an experience and I do see from their reaction and also from the attorneys, two of them were Chinese, they were encouraged to participate more in litigation. So, with that, I think that despite the rising numbers in female judges and more diversity in the bench, we still have a long way to go. Thank you.

**Honorable Mary Werner\***: I dare say, most of you want to just go home at this point, but I have a few comments that I feel I must make. I decided to become a judge on a cold January evening, January 7, 1989. I was head of the Family Crime Bureau in the Suffolk County District Attorney's Office, and I had a phone call from a detective that I knew from Rackets. His name was Frankie Morro, a good detective, and he had sort of that hesitancy in his voice as though he had bad news for me. He asked me were we prosecuting a case involving a domestic violence victim and I immediately knew he was talking about April LaSalata and that she was dead. I don't think before or since I have cried so hard. I cried in fury and in anger, in frustration because the judge to whom her case was assigned, the judge who was too busy to try her case, and save her life, hadn't had a trial in eight months. That night, I decided I was going to be a judge. Now

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\* Former New York State Supreme Court Justice, Suffolk County; Former Administrative Judge of Suffolk County.

most of you don't know what a crazy, outrageous decision that was because number one I was a woman, number two I was a Democrat. Now that doesn't mean so much in Suffolk County these days, but in those days, it was a death warrant. Of course, the democrats would allow me to run, they were happy to have someone willing to put their name on the ballot but they didn't expect me to win.

Let me back up a little. April LaSalata weighed about 90 pounds. She was 34 years old. She had been attacked by her husband after she served him with divorce papers because he had abused her repeatedly. Oh yes, she had an order of protection. When he attacked her, he attacked her by jumping out of a closet in her bedroom where he had gained access and he attacked her in front of her son, their son, they had two children and the son had the sense to run down to the basement because the husband had cut the phone lines into the house, but the basement phone worked, and so instead of bleeding to death on the floor of her bedroom, she was saved. She went to the hospital and she spent four months healing in the hospital, and then she started to come to our office because the case was on the trial calendar. It was an open and shut case. She was perfectly willing to say, "This man, my ex-husband, slashed me with a knife." What else would there be in a trial? What jury in any county in this country would have done anything except say "guilty as charged?"

And so each time the case was on the calendar she worried more and more because it would be adjourned. The bail was \$100,000 and then he made an application to another judge who also happened to be a man, because there were no women on the county court bench and there were no women on the Supreme Court bench and when he made the application for bail reduction, he got it, and his parents put their house up and they put down \$25,000 and he got out. And then he started stalking her. And he would do little things like get into the house somehow, and move her toothbrush, or move her comb, or change her lipstick, little things that showed that he was in control. She finally asked us in August, she said please can I ask the judge personally for a trial. I said sure. And so she stood up in front of this judge, who shall remain nameless, and she said, "Judge, please can I have a trial?" and the judge said, "Well, yes, but I have to try all those in-custody cases first." He didn't try any cases.

The next time the case was on she came to our office and she had a photograph and the photograph was of herself. Now, I told you she only weighed about 90 pounds. The photograph was a picture of April LaSalata in little bikini underpants with one hand over each of her very, very minimal breasts. What was the purpose of it? It was to show the judge the incision that was the closest thing

to a post mortem incision that I have ever seen, because it went from the base of her throat down to the top of her pubic bone. It was accompanied by several side slashes. She figured he would have to say okay, I will try the case. And what did he say? "I'm too busy." And so, her death is a death I remember, and I look over this audience and the only thing that pains me is the small number of young women who are here, because we need you. Yes, women judges, I'm sorry, are different. I don't care whether we carry our gender in a satchel or over our backs. We are different. The women on the benches in this county work hard all the time and they deserve your support. And there are women running for judicial office and you ought to go out and find out about them and work for them. Thank you.

**Dean Raful:** Chief Judge Kaye, Judge Fisher, Judge Chan - welcome back, Judge Warner, Dean Jones and Professor Miller, thank you to all of you for your wonderful talks today on this panel and a special thank you to the board of the Journal of Race, Gender, and Ethnicity. If the panel wonders if your words today matter, I can tell you that they do. I am still old fashioned enough to believe that role models matter. Let me tell you quickly about the class of 2007. The number one student in the graduating class is a woman, the editor-in-chief of the law review is a woman, the chair of the moot court program is a woman, the chair of the ADR program is a woman, the editor-in-chief of the Journal of Race, Gender, and Ethnicity is a woman, and the one student in this year's class who will be working next year at the Court of Appeals is, yes, a woman.

So, I think there are numerous wonderful women in the class of 2007 and they still need role models, and today the six of you provided role models. Thank you very much and, Chief Judge, good luck in your mission in the next few weeks. We are behind you. Thank you all for coming today. Thank you.